

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

BRIAN BOWEN II,  
PLAINTIFF,

v.

ADIDAS AMERICA, INC.;  
JAMES GATTO; MERL CODE;  
CHRISTIAN DAWKINS; MUNISH  
SOOD; THOMAS GASSNOLA; and  
CHRISTOPHER RIVERS,  
DEFENDANTS.

NO. 3:18-CV-3118-JFA

**MOTION TO DISMISS BY MERL CODE**

**TO: W. MULLINS McLEOD, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF:**

**YOU WILL PLEASE TAKE NOTICE** that, on the tenth (10<sup>th</sup>) day after service hereof, or as soon thereafter as is convenient for Court and Counsel, the Defendant, Merl Code, through his undersigned attorney, will move before the Presiding Judge for an Order dismissing the within action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure in that the Amended Complaint fails to state a claim upon which relief can be granted. This Motion is based upon the following:

1. The Amended Complaint does not plead wire fraud with the specificity required by Rule 9(b) or this Court's Order dated August 8, 2019. The Amended Complaint does not describe the time, place and context of any false representations, who made the false representations or that Merl Code benefited or obtained any possible benefit.

2. The Amended Complaint fails to allege a RICO enterprise or allege facts that give a specific time, place, date, individuals collectively involved, or other circumstances concerning the origin and formation of any conspiratorial agreement to harm Plaintiff.

3. The Amended Complaint should be dismissed insofar as Plaintiff's allegations of money laundering are predicated on tax fraud. Tax fraud is not a "specified unlawful activity" in 18 USC § 1956(c)(7) for purposes of the money laundering statute.

4. The Amended Complaint fails to allege a compensable concrete injury to Plaintiff's business or property caused by the RICO violation and thus Plaintiff lacks RICO standing.<sup>1</sup>

The Defendant adopts and joins in the Memorandum of Law filed or to be filed by Adidas America, Inc., Christopher Rivers and James Gatto (Save and except the portion of the Adidas Memo asserting no vicarious liability for Adidas which has no application to this Defendant).

FINGER, MELNICK & BROOKS, P.A.

*s/Terry A. Finger*

Terry A. Finger

S.C. Bar No. 2012

Attorney for the Defendant, Merl Code

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Hilton Head Island, South Carolina  
September 20, 2019

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<sup>1</sup> In this Court's Order dated August 8, 2019, in footnote 2, the Defense counsel believe the standing argument is able to be asserted in this second Motion to Dismiss. To the extent counsel has misread or misinterpreted the Court's Order on standing, apology is made.